



Ombudsman's Commentary

NOVEMBER 2006 REPORTS

I laid 29 reports before the Scottish Parliament today. Fourteen relate to the local government sector, nine to health, four to housing, one to the Scottish Executive and devolved administration and one is classed as 'multi-agency' and relates to local government and the Scottish Executive. The individual reports are available on the SPSO website, where they can be searched for by sector, date, Parliamentary region, body complained about and reference number.

Ombudsman's overview

This month, I am highlighting a complaint about Free Personal Care (FPC). It illustrates how individual members of the public can suffer when there is disagreement between different public bodies responsible for the implementation and delivery of policy. As the investigation into the complaint progressed, it became clear that it has wide-ranging implications.

Free Personal and Nursing Care:

Argyll and Bute Council and Scottish Executive Health Department (200503650 & 200600724)

The complainant, Mr C, complained that the Council had assessed his then 90-year-old father, Mr A, as eligible for Council funding for free personal care (FPC) but refused to make any payment due to lack of available funds. Mr C complained to the Council who advised him that the problem lay with insufficient funding from the Scottish Executive.

Mr C complained about this to the Scottish Executive and was advised that the Council had been given sufficient funds and it was, therefore, the Council's responsibility to ensure adequate resources were available to meet identified needs. Mr C complained to this office that the Council and the Scottish Executive were both failing to provide a service in line with the expectation created by government policy.

My investigation upheld the complaint that the Council failed to provide a service in that it did not provide Council funding for personal care in line with government policy. I recommended that the Council calculate and pay to Mr A payments for free personal care from the date of the original notification to the date (approximately four months later) when payments actually began.

I did not uphold the complaint that the Scottish Executive Health Department (SEHD) failed to ensure that the Council provided a service. I acknowledged Mr C's frustration at the time being taken to resolve a known problem but recognise that this is a matter of political rather than administrative responsibility. As I state in the report:

'As the investigation progressed, I identified two issues concerning the timescales for implementation of the FPC policy throughout Scotland and the reliance being placed by Councils on SEHD guidance on management of waiting lists issued prior to the introduction of this policy. This guidance was based on a legal judgement which also predates (and, therefore, does not address) the FPC policy. These matters are much wider than a complaint against a specific public body and not something which individual members of the public should be expected to resolve themselves. As such I have not considered these as a separate subject of Mr C's complaint. I have, however, considered the implications of the broader problems identified at the end of this report and will be drawing my concerns to the attention of the SEHD.'

Those concerns are laid out below in my conclusion:

'Mr C was caught at the centre of a well publicised difference of views between the SEHD who are responsible for the implementation of the Act and the Council who are responsible for delivering the Act. There has been growing public awareness of the number of people in Scotland affected by waiting lists (or equivalent systems) in the particular context of FPC throughout Scotland. The whole FPC policy is being actively reviewed by the SEHD. The move to review the system in light of problems identified is a welcome one. I am concerned, however, that the inevitable time delay in conducting such a comprehensive review does not address the immediate problems of the many individuals like Mr A who have been assessed as eligible but are subsequently denied funding for an indeterminate period of time. I am also concerned about the widespread reliance by Councils on Lord Hardie's judgement that relates to the provision of services being applied by Councils to their policies for managing the funding of FPC. I will, therefore, be drawing this case to the attention of the SEHD to illustrate the real and practical difficulties currently being encountered by some of those citizens the FPC policy was intended to benefit.'

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Health

Poor record keeping is once again the focus of this month's health overview. I upheld or partially upheld two complaints about this issue in different parts of Scotland, which I detail below.

Clinical treatment; diagnosis; record keeping:

Lanarkshire NHS Board (200501115)

The complaint concerned the actions of two district nurses at a home visit. The complaint was that the nurses failed to adequately assess the patient, Mrs C, or arrange for a hospital admission. My report concluded that the nursing records were poor, did not provide a reasonable record or an audit trail of events. As I have stated in previous Commentaries, poor record keeping can have serious consequences. In this case, I reached the view that the district nurses' failure to keep good records contributed to a failure to make an adequate assessment of Mrs C's condition.

My clinical adviser pointed to the standards of the registering and monitoring body for nurses in the United Kingdom, the Nursing and Midwifery Council (NMC), and stated that:

'The NMC view is that record keeping should be a fundamental part of nursing, midwifery and specialist community public health nursing practice. Records are a tool of professional practice and one that should help the care process. It is not separate from this process and it is not an optional extra to be fitted in if circumstances allow. The NMC guidance further suggests that good record keeping helps to protect the welfare of the patients and clients by promoting high standards of clinical care; continuity of care; better communication and dissemination of information between members of the inter-professional health care team; an accurate account of treatment and care planning and delivery; and the ability to detect problems such as changes in the patient's or client's condition at an early stage.'

In my conclusion I recommended that the Board's Primary Care Operating Division ensures that the two district nurses receive training in the appropriate actions to be taken in cases such as that of Mrs C, and in the importance of record keeping. They should be given the opportunity to reflect on the lessons to be learned from this case with a clinical supervisor and specifically to consider when to seek medical advice in the future.

Clinical treatment; diagnosis:

A Medical Practice, Lanarkshire NHS Board (200500798)

I conducted a separate investigation (linked to report 200501115) into a complaint about a GP at the medical practice where the patient, Mrs C, was registered. The complaint was that the GP had failed to carry out appropriate examination or refer Mrs C for hospital admission. My report states 'In view of the difference of opinion over Mrs C's condition and the lack of other available evidence, I am unable to reach a firm conclusion. Accordingly I make no finding on this complaint.' I invited the Practice to note my adviser's comments regarding completion of the clinical records.

Record keeping:

Greater Glasgow and Clyde NHS Board (200501786)

I partially upheld a complaint that staff had failed to fully establish a patient's medical condition before his operation was carried out. I, therefore, recommended that the Board remind staff of the importance of recording appropriate information.

Failure to call for ambulance; communication:

Lanarkshire NHS Board (200502721)

I upheld the complaint that an out-of-hours doctor failed to call for an ambulance for the complainant's husband, and partially upheld a complaint about poor communication. I recommended that the Board:

- put in place a policy that clearly outlines the roles and responsibilities for ambulance contact for out-of-hours doctors, in order to ensure this situation does not recur; and
- apologise for their poor communication on a particular issue.

I did not uphold or made no finding in five other complaints in the health sector this month, about the following issues and bodies:

Treatment and care: Greater Glasgow and Clyde NHS Board (200500511)

Psychiatric treatment: Grampian NHS Board Case (200502537)

Clinical treatment: A Medical Practice, Western Isles NHS Board (200600182)

Clinical treatment: General Dental Practice, Lothian NHS Board (200501420)

Home Visit assessment: Ayrshire and Arran NHS Board (200503550)

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Local government

Of the fourteen reports about local government, I upheld one complaint, partially upheld three complaints and did not uphold ten.

Planning and Roads:

Fife Council (200503036)

The complaint was that the Council failed to take appropriate action with regard to a wall built by the complainant's neighbour on a service verge. The complainant claimed that the wall impeded access to refuse collection vehicles and presented a danger to pedestrians. I upheld the complaint and recommended that the Council consider whether the neighbour should be invited to regularise the position with regard to building standards and apply for planning consent.

I partially upheld three complaints about the following issues and bodies:

Council Tax:

The Highland Council (200502508)

I recommended that the Council make an apology to the complainant, reinforced by a small payment, for poor handling of correspondence about her Council Tax.

Handling of Planning Objections:

Falkirk Council (200501691)

I recommended that the Council apologise to the complainant for failing to adhere to their stated aim of responding to objections within two working days and emphasise the importance of this to staff.

Housing Repairs; complaint handling: East

Dunbartonshire Council (200500542)

I partially upheld an aspect of the complaint relating to complaint handling, and recommended that the Council emphasise in guidance issued to Council staff that, in any formal response from the Council, complainants should be reminded of their rights to take their complaint further.

I did not uphold complaints about the following issues and bodies:

Sale of land; complaint handling:

North Lanarkshire Council (200401887)

Policy relating to rebuilding of school:

South Lanarkshire Council (200502055)

Policy/Administration: The City of Edinburgh Council (200503492)

Application for rehousing:

Stirling Council (200503641)

Social Work charges:

Perth and Kinross Council (W021313)

Bus route and subsidy: Aberdeen City Council (200501102)

Handling of Planning Applications:

Dumfries and Galloway Council (200500759)

Handling of Planning Applications:

East Dunbartonshire Council (200400660)

Processing of Planning Objection: Loch Lomond and The Trossachs National Park Authority (200503098)

Community and Support Services:

West Lothian Council (200501285)

This was a particularly complex case involving sensitive issues. I did not uphold the complaint and was grateful to the Council for their thorough, detailed responses.

Housing (RSLs)

I partially upheld one complaint, and did not uphold the other three complaints about Registered Social Landlords (RSLs) this month.

Failure to give disabled tenant help with redecoration costs:

Govanhill Housing Association Ltd (200502707)

I partially upheld a complaint that a tenant was not given help with redecoration costs to which he was entitled as a result of his disability. I recommended that the Housing Association apologise to the complainant for failing to inform him that he may have been able to ask for the Housing Association to carry out the decoration works; and ensure that tenants in receipt of a decoration allowance are aware that additional help may be available.

I did not uphold complaints about the following issues and bodies in the housing sector:

Failure to identify absence of load bearing wall; complaint handling: Paragon Housing Association Ltd (200501429)

Application for rehousing on medical grounds:

Glasgow Housing Association Ltd (200600047)

Neighbour problems: Muirhouse Housing Association Ltd (200402081)

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Scottish Executive and devolved administration

Investigation of a complaint about care:

The Scottish Commission for the Regulation of Care (The Care Commission) (Case 200503536)

I upheld the complaint that the Care Commission failed to properly investigate the complainant's complaint about the care of his mother in that the conclusion of the investigation was not borne out by the evidence presented.

I recommended that the Care Commission adopt the practice of seeking to agree a statement of complaint which will include reference to the specific matters being investigated.

Multi-agency (Health and local government)

Free Personal and Nursing Care:

Argyll and Bute Council and Scottish Executive Health Department (200503650 & 200600724)

This case is the subject of my overview. I upheld the complaint that the Council failed to provide a service in that it did not provide Council funding for personal care in line with government policy and I did not uphold the complaint that the Scottish Executive Health Department failed to ensure that the Council provided a service.

Compliance and Follow-up

In line with SPSO practice, my office will follow up with the organisations to ensure that they implement the actions to which they have agreed.



Alice Brown. 28.11.2006

The compendium of reports can be found on our website, www.spsso.org.uk

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